

CCRB INVESTIGATIVE RECOMMENDATION

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|---|--|-------------------------------------|--|------------------------------------|---------------------------------|
| Investigator: William Rasenberger | Team: Squad #7 | CCRB Case #: 202104208 | <input checked="" type="checkbox"/> Force | <input type="checkbox"/> Discourt. | <input type="checkbox"/> U.S. |
| | | | <input checked="" type="checkbox"/> Abuse | <input type="checkbox"/> O.L. | <input type="checkbox"/> Injury |
| Incident Date(s) Friday, 07/16/2021 9:00 AM | Location of Incident: West 145th Street station on the 1 train line | Precinct: 30 | 18 Mo. SOL 1/16/2023 | EO SOL 1/16/2023 | |
| Date/Time CV Reported Fri, 07/16/2021 11:11 AM | CV Reported At: CCRB | How CV Reported: On-line website | Date/Time Received at CCRB Fri, 07/16/2021 11:11 AM | | |

| Complainant/Victim | Type | Home Address |
|--------------------|------|--------------|
| | | |

| Subject Officer(s) | Shield | TaxID | Command |
|------------------------------|--------|--------|---------|
| 1. POM Luven Gilbertfigueroa | 09899 | 938565 | 030 PCT |

| Witness Officer(s) | Shield No | Tax No | Cmd Name |
|---------------------|-----------|--------|----------|
| 1. POM Redwan Ahmed | 22980 | 969464 | 030 PCT |

| Officer(s) | Allegation | Investigator Recommendation |
|-----------------------------|---|-----------------------------|
| A.POM Luven Gilbertfigueroa | Abuse: Police Officer Luven Gilbertfigueroa questioned § 87(2)(b) | |
| B.POM Luven Gilbertfigueroa | Abuse: Police Officer Luven Gilbertfigueroa ejected § 87(2)(b) from the transit system. | |
| C.POM Luven Gilbertfigueroa | Force: Police Officer Luven Gilbertfigueroa used physical force against § 87(2)(b) | |
| D.POM Luven Gilbertfigueroa | Abuse: Police Officer Luven Gilbertfigueroa made intentionally untruthful testimony against a member of the public in the performance of official police functions. | |
| § 87(2)(g), § 87(4-b) | | |

Case Summary

On July 16th, 2021, the CCRB received the following complaint from § 87(2)(b) [BR 1].

On July 16th, 2021, at about 9:00 a.m., § 87(2)(b) entered the 145th Street 1 line subway station in Manhattan on the downtown side. § 87(2)(b) did not have any money on his MetroCard. Because the MetroCard machines in the station were not working, the station agent allowed § 87(2)(b) to access the platform through the emergency exit gate. Police Officers Luven Gilbertfigueroa and Redwan Ahmed of the 32nd Precinct were assigned to a fixed post on the platform. PO Gilbertfigueroa observed § 87(2)(b) enter through the emergency exit and asked him why he did not pay for his fare [**Allegation A: Abuse of Authority – Question**, § 87(2)(g)]. After a brief interaction, § 87(2)(b) walked away from the officer and sat down on a nearby bench. PO Gilbertfigueroa then ordered § 87(2)(b) to leave the station [**Allegation B: Abuse of Authority – Other (Ejection from Transit System)**, § 87(2)(g)] and escorted § 87(2)(b) to a turnstile. When § 87(2)(b) stopped just ahead of the turnstile, and turned to face PO Gilbertfigueroa, PO Gilbertfigueroa pushed him [**Allegation C: Force – Physical Force**, § 87(2)(g)]. PO Gilbertfigueroa prepared a transit ejection report, in which he made intentionally untruthful testimony, indicating that § 87(2)(b) had entered the transit system without authorization [**Allegation D: Abuse of Authority – Untruthful Statement**, § 87(2)(g), § 87(2)(g), § 87(4-b)].

The investigation is in possession of six body-worn camera videos [BR 2] and 3 MTA videos for this case [BR 3, 4, and 5].

Findings and Recommendations

Allegation A: Abuse of Authority – Police Officer Luven Gilbertfigueroa questioned § 87(2)(b) Adames-Cordero.

Allegation B: Abuse of Authority – Police Officer Luven Gilbertfigueroa ejected § 87(2)(b) from the transit system

Allegation C: Force – Police Officer Luven Gilbertfigueroa used physical force against § 87(2)(b)

Allegation D: Abuse of Authority - Police Officer Luven Gilbertfigueroa made intentionally untruthful testimony against a member of the public in the performance of official police functions.

On July 16th, 2021, at about 9 a.m., § 87(2)(b) entered the 1 line station at 145th Street on the downtown side. § 87(2)(b) did not have money on his MetroCard, and was unable to add money because the MetroCard machines were not functioning. § 87(2)(b) spoke to the station agent, who allowed him to enter the platform area through the emergency exit gate. This is captured in a subclip of MTA footage [BR 6] § 87(2)(b) is wearing a red shirt, black pants, and a baseball cap). PO Gilbertfigueroa, who was standing five to ten feet away from the emergency gate, denied during his CCRB interview [BR 7] that he saw § 87(2)(b) attempt to use one of the MetroCard machines or speak to the station agent. He approached § 87(2)(b) after seeing him enter through the gate. It is undisputed that PO Gilbertfigueroa asked § 87(2)(b) why he had entered through the emergency gate, or something to that effect, and that § 87(2)(b) told PO Gilbertfigueroa that the station agent had let him through the gate because the MetroCard machines were not functioning.

According to PO Gilbertfigueroa, he credited § 87(2)(b) and thus had no need to verify his account with the station agent. § 87(2)(b) stated during his CCRB interview [BR 8] that PO Gilbertfigueroa told him “I can still remove you from the station.” § 87(2)(b) replied “then take me out.” According to PO Gilbertfigueroa, § 87(2)(b) told him “you can’t do shit.” PO Gilbertfigueroa is heard in his own body-worn camera footage [BR 9] describing the encounter to fellow officers in the aftermath of the incident. At 02:34, he is heard stating § 87(2)(b) told me] ‘she let me in’ I said ‘that’s all you have to do, but you still have to be courteous; you can’t be a jackass about it.’ Then § 87(2)(b) says ‘I’m not doing it; you can’t do anything anyway.’ So I said ‘nah, you’re leaving then.’”

It is undisputed that, after he told PO Gilbertfigueroa that a station agent had allowed him onto the platform, § 87(2)(b) walked to a nearby bench and sat down. PO Gilbertfigueroa acknowledged that § 87(2)(b) was not detained and was free to walk away. Nevertheless, PO Gilbertfigueroa followed § 87(2)(b) and continued to speak with him after he’d sat down. § 87(2)(b) stated that PO Gilbertfigueroa touched him on his arm, so he stood up. (He acknowledged, however, that his recollection was compromised, because he was afraid.) PO Ahmed stated during his CCRB interview [BR 10] that § 87(2)(b) stood up from the bench, and screamed at PO Gilbertfigueroa, while standing less than two feet away from the officer. PO Ahmed could not understand what § 87(2)(b) said, as he spoke in Spanish. PO Gilbertfigueroa did not describe § 87(2)(b) standing up and screaming. He stated that § 87(2)(b) while still sitting down, screamed “get out my face” and repeated that PO Gilbertfigueroa “could not do shit.” PO Gilbertfigueroa then ordered § 87(2)(b) multiple times to leave the station. At no point did PO Gilbertfigueroa consider § 87(2)(b) actions to be threatening.

PO Gilbertfigueroa explained during his CCRB interview that he decided to eject § 87(2)(b) because he was committing disorderly conduct, so far as his screaming and use of profanity had caused public alarm. However, in the ejection report that he prepared, PO Gilbertfigueroa noted the reason for the ejection as “unauthorized entry,” even though “breach of peace” and a blank, to-be-filled in “other” option were available. When § 87(2)(b) ignored his orders to leave, PO Gilbertfigueroa stated, he placed his hand underneath § 87(2)(b) s armpit. § 87(2)(b) then stood up of his own accord. According to both PO Gilbertfigueroa and PO Ahmed, PO Gilbertfigueroa then placed his hand on § 87(2)(b) s shoulder and escorted him to one of the turnstiles. This is partly captured in a sub clip of MTA footage [BR 11]. At 00:13 in this clip, § 87(2)(b) is seen stopping in front of a turnstile and turning to face PO Gilbertfigueroa. PO Gilbertfigueroa then pushes § 87(2)(b) twice in quick succession. PO Gilbertfigueroa explained that he pushed § 87(2)(b) because he had stopped abruptly, and seemed as though he would not exit voluntarily.

Under Patrol Guide § 212.11, during a common law inquiry (level 2 encounter), an officer may ask a person pointed and accusatory questions when he has founded suspicion of criminality. The subject may refuse to answer questions and is free to walk away. NYPD Patrol Guide § 212.11 [BR 12]

Under NYCRR § 1050.7, no person shall conduct himself in any manner which may cause or tend to cause annoyance, alarm or inconvenience to a reasonable person or create a breach of the peace. New York Codes, Rules and Regulations § 1050.7 [BR 13].

In *Matter of Armell N.*, the facts were as follows. Two police officers observed an individual in a subway car violating a provision of the Transit Authority rules, and directed the individual to comply with the rules. The individual did so. Shortly thereafter, the individual asked one of the officers “what the fuck are you looking at?” The officers decided to eject the individual from the train for being “disorderly and disrespectful,” and creating “public alarm.” The individual did not comply with the officers’ orders to leave. He told them that he would not leave and told them to “go fuck yourself.” The officers then forcibly removed the individual from the train. He

was, according to officer testimony, “irate,” “cursing and flailing his arms, being disorderly.” The officers ejected the individual from the transit system for being disorderly. Although the officers testified that the defendant caused public alarm in cursing at the officers, the court ruled that there was no evidence that the defendant’s actions had caused or created the risk of any annoyance, inconvenience, or alarm. Simply making annoying statements to the police, or exhibiting one’s frustration with an officer’s actions, does not constitute “breach of the peace.” The court found that there was no evidence that the defendant committed disorderly conduct under the Transit Authority regulations, and ruled that the officers had illegally ejected the defendant from the transit system Matter of Armell N., 28 Misc. 3d 528 [BR 14].

Under Patrol Guide § 212.20, any person who violates any portion of NYCRR Part 1050 is subject to ejection from New York City Transit facilities. Officers must permit a passenger who shows a willingness to leave to do so without interference. Officers must not use more force than necessary to effect the ejection, if the passenger refuses to leave. (Generally, grasping the upper arm and forearm to escort the person off the system is considered using reasonable force necessary to effect the ejection.) NYPD Patrol Guide § 212.20 [BR 15]

Under Patrol Guide § 221.01, force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. NYPD Patrol Guide 221.01 [BR 16].

Under Administrative Guide § 304-10, circumstances in which false or misleading official statements are made include, but are not limited to, written statements made in a sworn document, including affirmations made in Department forms. A false statement is an intentional (written or verbal) statement that a member of the service knows to be untrue, which is material to the outcome of any matter in connection with which the statement is made. An inaccurate statement is a statement that a member of the service knows, or should know, includes incorrect material information. There is no intent to deceive, but rather the member’s actions are grossly negligent. Members are prohibited from making (verbal or written) false or inaccurate statements. NYPD Administrative Guide § 304 – 10 [BR 22].

§ 87(2)(b), § 87(2)(g)

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§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(g), § 87(4-b)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party [BR 18].
- PO Gilbertfigueroa has been a member of service for sixteen years, over which time he has been the subject of one prior complaint and one allegation, which was not substantiated.
 - The investigation is in possession of PO Gilbertfigueroa's summary of employment history [BR 21].

Mediation, Civil, and Criminal Histories

- This case was not suitable for mediation.
- According to the New York City Office of Court Administration (OCA), § 87(2)(b) has not been convicted of a crime in New York City [BR 19].
- According to the New York City Comptroller's Office, there are no notices of claim related to this incident [BR 20].

Squad: _____7_____

Investigator: Will Rasenberger Inv. Will Rasenberger 10/06/2021
Signature Print Title & Name Date

Squad Leader: _____

Signature _____

Manager Vanessa Rosen _____

Print Title & Name _____

October 18, 2021 _____

Date _____

Reviewer: _____

Signature _____ Print Title & Name _____ Date _____